

GOLDEN TRIANGLE EXPLORATION CO.

IBLA 84-48      Decided June 13, 1985

Appeal from a decision of the Nevada State Office, Bureau of Land Management, declaring mining claims abandoned and void. N MC 223196 through N MC 223247.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

BLM may properly declare an unpatented mining claim located after Oct. 21, 1976, abandoned and void where the claimant failed to file either evidence of annual assessment work or a notice of intention to hold the claim prior to Dec. 31 of the year following the year in which the claim was located, as required by sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1982).

APPEARANCES: Shirley McCrosky, Golden Triangle Exploration Company, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

The Golden Triangle Exploration Company has appealed from that part of a decision of the Nevada State Office, Bureau of Land Management (BLM), dated August 9, 1983, declaring the Jasper Nos. 1 through 30 and Jasper Nos. 35 through 56 mining claims, N MC 223196 through N MC 223247, abandoned and void. The basis for the decision was the failure to file with BLM either evidence of annual assessment work or notices of intention to hold the claims on or before December 30, 1982, as required by section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1982). 1/

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1/ Consideration of this appeal was stayed pending judicial review of the mining claim recordation provisions of FLPMA. The constitutionality of these provisions was recently upheld by the Supreme Court. United States v. Locke, 105 S. Ct. 1785 (1985).

Appellant's mining claims were located November 12, 1981, and filed for recordation with BLM on November 23, 1981, pursuant to section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1982). The record contains a copy of a proof of labor filed with BLM on July 20, 1983, but no proof of labor for 1982. In its statement of reasons for appeal, appellant contends that it had filed a proof of labor for 1982 on August 25, 1982, with the White Pine County Recorder, in accordance with state law, but that the filing with BLM was apparently "lost in the mail or elsewhere." Appellant submits a copy of this proof of labor. Appellant further contends it spent money on the claims in the past year and did not intend to abandon them.

[1] Section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1982), requires the owner of an unpatented mining claim located after October 21, 1976, to file 2/ either evidence of annual assessment work or a notice of intention to hold the claim with BLM "prior to December 31 of each year following the calendar year in which the said claim was located." Accordingly, appellant was required to file one of these two documents with BLM prior to December 31, 1982. There is no evidence of such a filing. Section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1982), provides that failure to file the required instrument "shall be deemed conclusively to constitute an abandonment of the mining claim \* \* \* by the owner." In such circumstances, the claim is rendered void. 43 CFR 3833.4(a).

Accordingly, we conclude that BLM properly declared appellant's mining claims abandoned and void. 3/ Klondex Gold & Silver Mining Co., 69 IBLA 247 (1982). As we said in Lynn Keith, 53 IBLA 192, 196-97, 88 I.D. 369, 371-72 (1981):

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 [(1982)] is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford

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2/ File is defined as "being received and date stamped by the proper BLM office," although with respect to annual filings of evidence of assessment work or notice of intention to hold, "timely filed" includes documents received by Jan. 19 in an envelope clearly postmarked within the filing period. 43 CFR 3833.0-5(m).

3/ Appellant would not be excused from compliance with the statute even if it was proved that the required document was "lost in the mail." It is well established that a claimant, in mailing a document, must bear the consequences of loss or untimely delivery of his filing caused by the Postal Service. Phil E. Parks, 69 IBLA 48 (1982), and cases cited therein. In addition, in order to establish that a mining document was in fact filed, a claimant must present substantial evidence supporting receipt of the document by BLM, thereby rebutting the presumption that BLM employees have properly discharged their official duties and not lost or misplaced the document. Id. Appellant has presented no such evidence.

claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

\* \* \* At common law, evidence of the abandonment of a mining claim would have to establish that it was the claimant's intention to abandon and that he in fact did so. Farrell v. Lockhart, 210 U.S. 142 (1908); 1 Am. Jur. 2d, Abandoned Property §§ 13, 16 (1962). Almost any evidence tending to show to the contrary would be admissible. Here, however, in enacted legislation, the Congress has specifically placed the burden on the claimant to show that the claim has not been abandoned by complying with the requirements of the Act, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon may not be considered. [4/] [Emphasis in original.]

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

R. W. Mullen  
Administrative Judge

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4/ Accord, United States v. Locke, supra at 1795-96.

